IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6231 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BILKISHNANU VALI MOHAMMAD

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR KG SHETH, Leanred APP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 17/10/2000

ORAL JUDGEMENT

1. This is an application under Section 482 of the Criminal Procedure Code,1973 (for short "the said Act")

against the judgement and order of the learned Additional Sessions Judge, Court No.13, Ahmedabad in Criminal Revision Application No. 301 of 1999 dated 22.9.1999 under which the learned Additional Sessions Judge dismissed the said criminal revision application of the present petitioner challenging the judgement and order passed by the learned Metropolitan Magistrate, Court No.4, Ahmedabad in Criminal Misc. Application 8 of 1999 on 17.8.1999 under Section 125 (3) of the said Code awarding sentence of two months simple imprisonment against the contesting respondent since the contesting respondent did not pay monthly maintenance allowance awarded
against him by the Court concerned for a period of 16 months. The petitioner claims that the sentence awarded is too lenient and, therefore, it is required to be enhanced.

2. Rule was issued. Contesting respondent has not appeared before the Court. Mr. K.G.Sheth, learned APP appeared for State. I have heard learned advocate for the petitioner and Mr.K.G.Sheth, learned APP for State and have perused the papers.

3. Admittedly, the order was passed under Section 125 of the said Code against the contesting respondent for payment of maintenance and admittedly, the maintenance was due for a period of 16 months and, therefore, the petitioner submitted application before the Trial Court and warrants were issued. There, after a prayer was made by the petitioner under Section 125 (3) of the said code for sending the contesting respondent to jail. The learned Magistrate heard the parties and passed an order that the contesting respondent to suffer SI for 2 months since he failed to pay the maintainace for a period of 16 months. The said order is dated 17.8.1999. The petitioner preferred Criminal Revision Application No. 301 of 1999 which was dismissed by the learned Additional Sessions Judge. The learned advocate for the petitioner has argued that the sentence awarded is to lenient and it deserves to be increased. Mr. K.G.Sheth, learned APP states that instead of two months the Court may enhance the sentence to four to six months.

4. The provisions made in Section 125 (3) of the said Code makes it clear that if there is a default in payment of maintenance allowance for one months, the defaulter can be sent to imprisonment for a period of one month. Therefore, each month default will require the Court to send the defaulter to jail for a maximum period of 1 month.

5. In the present case, admittedly, the contesting respondent did not pay the amount of maintenance for a period of 16 months. Therefore, the Court could have awarded sentence for a period of 16 months. That would be the maximum imprisonment under the law. However, having regard to the facts and circumstances of the case and considering the financial condition of contesting respondent as was found from the orders of the Court below, it would be just and proper to increase the quantum of amount of sentence. Therefore, instead of sentencing the petitioner for a period of two months, it would be appropriate to increase the said period of 8 months. The petitioner must have undergone two months period and, therefore, it would be necessary for him to undergo six months simple imprisonment.

7. I am therefore of the view that sentence awarded by the learned Magistrate and confirmed by the learned Additional Sessions Judge is too lenient and some deterrent action has to be taken. It is to be seen that the wife did not get maintainace for a period of 16 months and she had to pull on without the maintainace amount received from the contesting respondent. The provisions has been made under Section 125 of the said Code in order to see that the wives and children do not starve. Summary proceedings are also made available with a view to have a speedy disposal of such matters. However, after orders are passed, if they are not implemented the entire object of passing orders and on making provisions for such speedy and summary remedy would be frustrated. In that view of the matter, deterrent action is necessary and with a view to impose such deterrent action, in my opinion this is a fit case wherein the sentence should be increased from two months to eight months. That would be 15 days SI for each months default.

8. In that view of the matter, the present petition is allowed. The petitioner is directed to undergo SI for a total period of 8 months has already undergone for committing default in payment of maintenance for a period of 16 months amounting to Rs. 16,250/-. At the same time, it is directed that if the petitioner pays the said amount then he shall be released from imprisonment on payment of such amount. Rule is made absolute with no order as to costs.

(D.P.Buch,J)

(vipul)